

OPEN MEETING LAW REGULATION

PUBLIC HEARING

University of Massachusetts - Dartmouth
715 Purchase Street
New Bedford, Massachusetts 02740

Wednesday, August 11, 2010

PANEL:

From the Attorney General's Office

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Jennifer Grace Miller
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P R O C E E D I N G S

BRITTE MCBRIDE: We're going to get started. Good afternoon. My name is Britte McBride and I am the Director of Division of Open Government in the Attorney General's office. With me from the Attorney General's office are Jennifer Miller, Chief of the Government Bureau and Jonathan Sclarsic, Assistant Attorney General in the Division of Open Government.

Today is Wednesday, August 11, 2010, and this is a public hearing to receive testimony on the Open Meeting Law regulations included at 940 CMR 29.00 as promulgated by the Attorney General. These regulations were promulgated as emergency regulations on July 1, 2010. This hearing is being held pursuant to Chapter 30A, Sections 2 and 3 of the General Laws and under the authority granted to the Attorney General by Chapter 30A, Sections 25(a) and (b) of the General Laws. The notice for this hearing was published in the State Register by the Secretary of State on July 23, 2010. The purpose of these

1 regulations is to interpret, enforce and
2 effectuate the purposes of the Open Meeting
3 Law Chapter 30A, Sections 18 through 25 of
4 the General Laws.

5 This is the fourth and final hearing
6 the Attorney General's office is holding to
7 holding to receive comments on these
8 regulations.

9 The purpose of this hearing is to
10 receive comments on the emergency
11 regulations. We ask that you limit the scope
12 of your comments during this hearing to the
13 regulations before us. We are eager to hear
14 oral testimony from anyone who wishes to
15 speak, and we ask is that those who wish to
16 testify sign up on the sheet outside of the
17 door. We'll call individuals to testify in
18 the order in which they have signed up. In
19 addition, there are copies of the regulations
20 available outside the door if you require
21 them. We have a stenographer transcribing
22 the testimony, so we ask that you make your
23 best effort to speak clearly and before you
24 begin your testimony, please state and spell

1 your name so that it's represented correctly
2 in the record.

3 Finally, public comment on the Open
4 Meeting Law regulations will be remain open
5 until August 18th. We will accept written
6 comments today during this hearing. You may
7 also submit written comments through the
8 close of business on August 18th either
9 through e-mail to openmeeting@state.ma.us or
10 through postal mail to the office of the
11 Attorney General. Additional information
12 pertaining to the Open Meeting Law, these
13 regulations and hearings may be found on the
14 Attorney General's website.

15 And with that we will call our first
16 person to testify. Ross Perry.

17 ROSS PERRY: Thank you. Thank you.
18 I'm Ross Perry, R-o-s-s P-e-r-r-y. I
19 represent SERPED which is Southeast Regional
20 Planning and Economic Development District.

21 As a regional body, SERPED is committed
22 to full compliance to the Open Meeting Law
23 and I appreciate the opportunity to talk with
24 you today and pass on some of our concerns.

1 Section 29.03, I'll paraphrase this,
2 refers to notice for posting requirements.
3 Requirements specific to a regional or
4 district public body, the requirement to post
5 notice in each city and town within the
6 region in the manner prescribed or selected
7 by the local public bodies in that town. So
8 this is sort of where I'm trying to focus my
9 concerns.

10 We find this -- these requirements as
11 worded to be actually very onerous especially
12 for a regional body that covers a large area.
13 In the case of SERPED we cover 27
14 communities. For some of the Homeland
15 Security projects we represent -- we cover 96
16 communities.

17 The first burden in complying with this
18 section is logistics of actually
19 communicating with each city and town. The
20 second is the difficulty of creating a
21 meeting posting in the manner prescribed for
22 or selected by the local public body. This
23 can result in the case of a regional body
24 like SERPED having to construct dozens of

1 different -- differently formatted meeting
2 notices. As I mentioned, 27 for our member
3 communities, 96 with some for Homel and
4 Securities. So if each town has a different
5 prescribed manner of posting, it's a major
6 burden for us to do this for every one of
7 those meetings.

8 The next challenge is actually
9 arranging for someone to post these meetings.
10 The requirement as stated above was for us to
11 post it in the local town or city. For us to
12 get to 27 communities or 97 for Homel and
13 Security projects to post it is rather
14 difficult. We have really have no way to
15 control, we have no authority over anybody in
16 those towns and have no way to ensure that
17 the posting actually occurs. Yet as I
18 understand the regulation, if the posting
19 doesn't occur, then we can essentially be in
20 violation of this provision. The Open
21 Meeting Law allows county public bodies to
22 post notices in the county office and it
23 allows state public bodies to post it on a
24 web site. So today I'm asking or proposing

1 that the Attorney General consider allowing
2 regional public bodies to post notices
3 according to the same procedures as county or
4 state public bodies. If this approach is not
5 deemed to be feasible, then adopting a
6 universal meeting notice format will at least
7 make the posting in multiple jurisdictions a
8 little more efficient by allowing us to use a
9 single consistent notice format in each of
10 these towns.

11 Section 29.04 mentions alternative
12 notice posting methods, paragraph five. It
13 allows a local public body to meet its notice
14 requirement by providing an audio recording
15 of the meeting notices available to the
16 public by telephone at all hours. So we'd
17 ask that you consider allowing these means of
18 meeting posting for a regional body as well.

19 As a regional body, we often have
20 dozens of meetings each month and posting
21 notices in each community for each meeting
22 can be very time consuming. If the
23 requirement for notice postings in each local
24 city and town is not changed as I've

1 highlighted before, then we ask you to allow
2 us to consider at least combining these
3 together in order to have one posting for
4 multiple meetings.

5 That's all I've got to say. Thank you
6 very much for the opportunity to comment on
7 this regulation.

8 BRITTE MCBRIDE: Thank you.

9 At this point in time no one else has
10 signed up to testify.

11 Would anyone else like to come up and
12 offer testimony?

13 (No response).

14 BRITTE MCBRIDE: If no one wishes to
15 testify at this time, we will recess the
16 hearing. We will be here if other
17 individuals want to come and want to offer
18 testimony, by all means we will accept it.
19 For the time being we will stand in recess
20 until five o'clock in the event that no one
21 else appears to testify. If anyone does
22 appear prior to that time, we'll reopen the
23 hearing at that point in time.

24 Thank you.

1 (A short recess was taken.)

2 BRITTE MCBRIDE: It's 4:45 p.m. on
3 Wednesday, August 11th. We're going to
4 reconvene the public hearing on the Open
5 Meeting Law regulations that concluded at 940
6 CMR 29.00.

7 Mr. Ossie Jordan is being called to
8 testify.

9 OSSIE JORDAN: Good afternoon.

10 BRITTE MCBRIDE: Good afternoon.

11 OSSIE JORDAN: I'm Ossie Jordan with
12 the notable Brockton Water Commission. Been
13 a little bit in the newspaper recently and
14 other media. I guess more of a -- kind of a
15 question more than a comment per se, although
16 comments could lead to this I guess. Given
17 the situation, if for instance we're all new
18 commissioners that are on the water
19 commission since March of this year. If we
20 wanted to do something simple like decide who
21 might be the spokesperson to talk to the
22 media and we wanted to have kind of an
23 internal discussion, is that something that
24 we can do either in Executive Session if need

1 be, or does it have to be in the open session
2 since we do have the news media sitting there
3 taking every little anything that we say the
4 whole time?

5 BRITTE MCBRIDE: I think at this
6 particular juncture the hearing is to receive
7 public comment on the regulations. By all
8 means the Division of Open Government and
9 that's Jonathan or I would be happy to
10 entertain the specific inquiry, not in the
11 public quorum of receiving comments on these
12 regulations before us. And both of us are
13 happy to give you our information and then we
14 can have that conversation with you about
15 kind of a specific questions about the law.

16 Is there anything further on the
17 regulation?

18 OSSIE JORDAN: No, but then with
19 that there are times that I'm not sure the
20 law allows and I guess that's where it's
21 unclear to individuals out there when you can
22 do certain things. Executive, it's pretty
23 clear on some things with personnel. Some
24 other kinds of things that you need to deal.

1 But there are other times that you just need,
2 especi ally when you're brand new, what are
3 you going to talk about which I'm sure you
4 folks di d before you came down here who is
5 going to be the spokesperson, etcetera,
6 etcetera, etcetera. You don't want to do
7 that speci fi cally in an open meeting. And
8 sometimes there's a di scussi on on shoul d it
9 be you, shoul d it be I, shoul d it be somebody
10 else. That seems to be something that you
11 woul dn't want to have in an open forum. The
12 law doesn't seem to address that per se. And
13 I just use that as an example. And there are
14 many things like that that do come on during
15 the meeting that you may want to di scuss how
16 you want to actual ly address something and
17 not looking for the law to address each and
18 every li ttle subject, but certain ly something
19 like the example I gave before it was there
20 or some examples whether it be an addendum or
21 what have you might be hel pful to indi vi dual s
22 so that they can understand what's what. I
23 just fi ni shed doi ng 38 years of what you're
24 doi ng, so I know it gets down to speci fi cs.

1 And the largest problem quite often when you
2 promulgate any law is the pieces between the
3 lines, grant you that's why we have legal
4 departments for and keep them very busy along
5 with the courts. But a lot of these issues
6 can be resolved if people would understand a
7 little bit what's going on.

8 I know there's been some addressing of
9 the new technology that the law didn't talk
10 about in the past. And that's somewhat
11 clear, but the every day kind of process, the
12 every day situation that may come up, issues
13 of recess, can you go out and talk amongst
14 yourselves? And once you have a quorum of
15 individuals, it seems like it's impossible to
16 say anything without it being in the public
17 media because it's construed that you're
18 doing something behind the scenes and it
19 might be just a clarification on, you know,
20 who is going to lead the group or something.
21 You don't want to look like you're not
22 prepared or you don't know what you're
23 talking about. You have enough criticism
24 from the public and the media on a regular

1 basis. It's these kinds of things just add
2 to it. So, without, like I said, having a
3 million different examples because you'll
4 never be able to answer all of them anyway,
5 because there would always be something new.
6 But at least a few as an addendum or some
7 kind of a -- yeah, I guess it would be an
8 addendum to the regulation would be helpful
9 on suggestions on things. And I mean you
10 folks get them just like I used to all the
11 time, so this is not -- you can call it
12 guidance and maybe emphasize that it is
13 guidance. That it's not law. And it's just
14 something for you to utilize as a way of
15 dealing with a particular issue or issues.
16 Because a lot of that would be helpful for
17 us. Other than that I think that's about it.

18 BRITTE MCBRIDE: Thank you very
19 much.

20 There is a public comment period that's
21 open until August 18th which is next
22 Wednesday. In the event that you'd like to
23 submit anything in writing, we would
24 certainly be interested this hearing your

1 comments.

2 OSSI E JORDAN: Thank you very much.

3 BRITTE MCBRIDE: Is there anyone
4 else to testi fy?

5 (No response.)

6 BRITTE MCBRIDE: At this time there
7 is no one to testi fy. We are going to stand
8 in recess until 5:15.

9 (A short recess was taken.)

10 BRITTE MCBRIDE: It is 5:43 on
11 Wednesday, August 11, 2010. Seeing no one
12 else who is going to testi fy, we are going to
13 recess this hearing and the public comment
14 period will be open until August 18, 2010.

15 Thank you very much.

16 (Heari ng Concl uded at 5:43 p.m.)

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C E R T I F I C A T E

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I, Catherine Lawson Zelinski, a
Certified Shorthand Reporter, the undersigned
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I am not related to any of the parties
in this matter by blood or marriage and that
I am in no way interested in the outcome of
this matter.

I further certify that the testimony
hereinbefore set forth is a true and accurate
transcription of my stenographic notes to the
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IN WITNESS WHEREOF, I have hereunto set
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Catherine L. Zelinski
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